MGN X 5-1-08 5 Dec 07

FILED

07 DEC -5 PM 4:38

CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY: DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

'07 MJ 2820

UNITED STATES OF AMERICA	) **Magistrate Docket No.**____________
	)
	)
Plaintiff	) COMPLAINT FOR
	) VIOLATION OF:
v.	)
	) **TITLE 18 U.S.C. § 1546(a):**
Wolfgang Martin GRABHER	) Fraud and misuse of visas, permits and
	) other entry documents
	)
	)
	)

The undersigned complainant, being duly sworn, states:

Count 1

On or about June 25, 2003, within the Southern District of California, the defendant, Wolfgang Martin GRABHER, did knowingly and willfully make a false claim or statement in an application for a United States Visa with intent to induce or secure the issuance of a United States Visa as evidence of authorized stay or employment in the United States, and used that U.S. Visa, as evidence of authorized stay or employment in the United States, to enter the United States knowing it to have been procured by means of a false claim or statement, to wit: Defendant completed form DS-156: U.S. Non-immigrant Visa Application in which he failed to disclose his previous criminal arrest record, secured said U.S. Visa, and used the U.S. Visa to travel into the United States, knowing that he was ineligible for a U.S. Visa. All in violation of Title 18, United States Code, Section 1546(a).

Count 2

On or about March 01, 2007, within the Southern District of California, the defendant, Wolfgang Martin GRABHER, did knowingly and willfully make a false claim or statement in an application for a waiver of a United States Visa with intent to induce or secure the issuance of a waiver of the United States Visa requirements as evidence of authorized stay in the United States, to wit: Defendant completed form I-94W:

ORIGINAL

U.S. Nonimmigrant Visa Waiver Arrival /Departure Form application in which he failed to disclose his previous criminal arrest record, knowing that he was ineligible for a waiver of the U.S. Visa requirement. All in violation of Title 18, United States Code, Section 1546(a).

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

R. Christopher Good
Special Agent
U.S. Department of State
Diplomatic Security Service

SWORN AND SUBSCRIBED TO before me

This 5th day of December, 2007.

RUBEN B. BROOKS
UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT RE:

Wolfgang Martin GRABHER

PROBABLE CAUSE STATEMENT & STATEMENT OF FACTS

I, Robert Christopher Good, being duly sworn, declare under penalty of perjury that the following statement is true and correct:

I am a Special Agent with the U.S. Department of State, Diplomatic Security Service (DSS) assigned to the San Diego, CA DSS Resident Office. I have been so employed since April 08, 2002, I have received specialized training in the investigation of Visa and Passport Fraud, and I am empowered to investigate violations of the laws of the United States involving the laws governing the issuance of Passports, Visas, and other travel documents utilized to transit international borders. This affidavit does not contain every material fact that I have learned during the course of this investigation. I make this affidavit based upon my own knowledge, upon electronic records furnished to me in my official capacity, and upon information and documents furnished to me by other federal agents, law enforcement officers, and witnesses.

During the performance of my duties, I have obtained evidence that Wolfgang Martin GRABHER made false statements in an application for, and use of, a United States Visa. This affidavit is submitted in support of a criminal complaint charging the following individual with deliberately making false statements in an application for a U.S. Non-Immigrant Visa in violation of Title 18, United States Code, Section 1546(a):

Wolfgang Martin GRABHER
Date of Birth: April 02, 1970
Place of Birth: Lustenau, Austria
Country of Citizenship: Austria
Passport No: H03928893 - Austrian

According to official records reviewed by Affiant, Wolfgang Martin GRABHER, executed form DS-156: United States Department of State Nonimmigrant Visa Application #69364346 on 06/25/2003 at the U.S. Consulate in Tijuana, BC, Mexico, with the intention of obtaining an H1B U.S. Visa for business purposes. The DS-156: Nonimmigrant Visa Application form is the initial document that visa applicants must complete, sign, date and affirm in order to be considered for a United States Visa. Your Affiant obtained and reviewed GRABHER's original DS-156 Visa application form. On this form he listed his name as Wolfgang Martin GRABHER, born on 04/02/1970 in Austria. GRABHER further listed his Nationality as Austrian, and his passport number as H03928893. GRABHER affixed his signature certifying to the truthfulness of his responses to all the printed questions contained on the form. Your Affiant has reviewed this DS-156 and determined that Wolfgang M. GRABHER made a material false statement(s) on his application for a U.S. Visa, designed to conceal his previous criminal history record.

1) Affiant obtained and reviewed the aforementioned DS-156 form. The DS-156 form requests basic biographic information about the applicant and asks a series of "YES/NO" questions pertaining to the applicant's criminal history, prior immigration violations, and organizational affiliations that are used to determine the applicant's suitability for admission into the United States. Block #38 on that DS-156 form contains several questions which are prefaced by the explicit statement: " IMPORTANT: ALL APPLICANTS MUST READ AND CHECK THE APPROPRIATE BOX FOR EACH ITEM. A Visa

may not be issued to persons who are within specific categories defined by law as inadmissible to the United States (expcept (sic) when a waiver is obtained in advance). Is any of the following applicable to you? "

a) The first statement in Block #38 asks the applicant the following question: " Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or any other similar legal action? Have you unlawfully ever distributed or sold a controlled substance (drug), or been a prostitute or procurer of prostitutes? "

   The box next to "NO" was checked as the applicant's answer to this question.

b) The second statement in Block #38 asks the applicant the following question: " Have you ever been refused admission to the U.S., or been the subject of a deportation hearing, or sought to obtain or assist others to obtain a visa, entry into the U.S., or any other immigration benefit by fraud or willful misrepresentation or other unlawful means? Have you attended a U.S. public elementary school on student (F) status or a public secondary school after November 30, 1986 without reimbursing the school? "

   The box next to "NO" was checked as the applicant's answer to this question.

c) Wolfgang M. GRABHER executed the Non-immigrant Visa Application by signing his name and dating the document in Block 41 of the aforementioned DS-156 form, attesting to the veracity of his responses to the printed questions contained on that form, under the following jurat: "I certify that I have read and understand all the questions set forth in this application and the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the United States. I understand that possession of a visa does not automatically entitle the bearer to enter the United States of America upon arrival at a port of entry if he or she is found inadmissible."

d) Consequently, finding no information provided by GRABHER within the DS-156 that would make him ineligible for a U.S. Visa and therefore ineligible for entry into the United States, the U.S. Consulate in Tijuana, BC, Mexico issued Wolfgang M. GRABHER a class H1B U.S. Visa, Control # 2003177406001 / Foil # 69364346. This U.S. Visa was issued on 06/26/2003 and valid until 05/23/2006.

2) Affiant conducted record checks through law enforcement databases that revealed that GRABHER used his Austrian Passport # H03928893, containing the U.S. class H1B Visa, to enter the US on 06/26/2003, 08/10/2003, 01/11/2004, 04/26/2004, 08/08/2004, 01/24/2005, 04/02/2005, 01/01/2006, and 03/11/2006 during the visa's validity period.

3) Affiant reviewed a certified German Criminal History Record dated 11/22/2004, file # 14036239-14574300-RB-MLT/---/A-U999--* on Wolfgang GRABHER, which was provided to the US Consulate Frankfurt, Germany from the Federal Attorney General at the Federal High Court of Justice, 53094 Bonn, Germany. This record was translated from German into the English language by the US Consulate in Frankfurt, Germany. The record identifies Wolfgang GRABHER's date of birth as 04/02/1970, place of birth as Lustenau, Austria, and citizenship as Austrian. The translation of the record states that:

a) On 03/03/1994, GRABHER was arrested and subsequently convicted, Reference #5 LS 124/93, by the District Court in Boeblingen, Germany for the crime of "Simulating the Commission of a Punishable Crime, Attempted Fraud", Date of the (last) offense 07/09/1991, in violation of the Applicable Statues: Criminal Code paragraphs 145D, 263, 22, 23, 53. GRABHER was sentenced to 1 year confinement and 3 years probation. Punishment was remitted effective 07/15/1997 (confinement was waived, but probation still enforced).

b) On 08/24/2001, GRABHER was arrested and subsequently convicted, Reference #14 CS 162 JS 3118/97 3021 VRS, by the District Court in Stuttgart, Germany for the crimes of "Willful Disregard of the Bookkeeping Duty by delayed Balancing, Bankruptcy through neglected Balancing in 3 cases, Willful Bankruptcy neglected Bookkeeping, Willful Postponement of Bankruptcy", Date of the (last) offense 04/14/1998, in violation of the Applicable statues: Criminal Code paragraphs 283(1)(5), (7B), Section 6, 283B(1)(3B), 14(1)(1),53,56, Limited Companies Law, paragraphs 84(1)(2),64(1). GRABHER was sentenced to 10 months confinement and 2 years probation. Punishment was remitted effective 11/21/2003 (confinement was waived, but probation still enforced).

c) On 08/27/2003, GRABHER was arrested and subsequently convicted, Reference #16 CS 63 JS 42908/03 3029 VRS, by the District Court in Stuttgart, Germany for the crime of "Negligent Drunkenness in Traffic in primary conjunction with Resisting Police Officers", Date of the (last) offense 05/27/2003, in violation of the Applicable statues: Criminal Code paragraphs 316(1),(2),69, 69A,113,63. GRABHER was sentenced to pay a fine and had his Drivers Permit suspended until 03/26/2004.

4) Affiant reviewed copies of Superior Court of the State of California for San Diego County records for court case number GIC861542 concerning the matter of Triagon Holding AG (plaintiff) vs. Wolfgang GRABHER, et al, (defendants). This court record included a copy of a transcript of a deposition of Wolfgang Martin GRABHER, taken under oath on 09/12/2006 in San Clemente, CA, where GRABHER was asked if he was found guilty of an offense in Stuttgart (Germany), to which GRABHER answered "Yes". This transcript further states that GRABHER was then asked if he had a prior conviction in Germany for which he was sentenced to prison for business fraud and put on probation, to which GRABHER answered "There was a conviction, Yes".

5) Affiant reviewed San Diego Police Department Records for Wolfgang GRABHER. These records indicated that:

a) On 01/19/2003, GRABHER was arrested for the charge of Inflicting Corporal Injury on a Spouse/Cohabitant in violation of California Penal Code Section# 273.5, reference arrest report # SD AR 03101726A.

b) On 03/17/2006, GRABHER was arrested for the charge of Battery on a Person in violation of California Penal Code Section# 243A, reference arrest report # SD AR 06111819.

6) Your Affiant reviewed U.S. Customs and Border Protection (CBP) Alien File # A071646168 for Wolfgang GRABHER. This file shows that on 03/01/2007, GRABHER attempted to enter the United States from an international flight arriving at the San Diego International Airport. GRABHER presented

an I-94W: Nonimmigrant Visa Waiver Arrival/Departure Form, admission #27701423903, since he was a national of a country participating in the U.S. Visa Waiver Program and not in possession of a U.S. Visitor's Visa as authorized entry into the United States. GRABHER also produced Austrian Passport # H03928893 as proof of his identity. The I-94W form requests basic biographic information about the applicant and asks a series of "Yes/No" questions that are used to determine the applicant's suitability for admission into the United States. The I-94W prefaces the questions with the explicit wording of: " Do any of the following apply to you? (*Answer Yes or No*) " and asks the following questions:

a) A. "Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities?

   The box next to "No" was checked as the applicant's answer to this question.

b) B. "Are you seeking to work in the U.S.; or have you ever been excluded or deported; or been previously removed from the United States; or procured or attempted to procure a visa or entry into the U.S. by fraud or misrepresentation? "

   The box next to "No" was checked as the applicant's answer to this question.

c) After answering all the questions, GRABHER executed the I-94W Non-immigrant Visa Waiver Arrival/Departure Form by signing his name and dating the document, attesting to the veracity of his responses to the printed questions contained on that form, under the following jurat: " CERTIFICATION: I certify that I have read and understand all the questions and statements on this form. The answers I have furnished are true and correct to the best of my knowledge and belief. "

A further review of A-file # A071646168 shows that when GRABHER was initially questioned by CBP officers he stated that he was never arrested, and then he stated that he was never arrested but was taken to the San Diego Police Department and booked with an FBI number and released on bond. When confronted with his criminal history record he admitted, during the oral interview and on a sworn statement, that he had been arrested on two different occasions (on/about 01/20/2003 and 03/17/2006) in San Diego, CA.

Based on the aforementioned information, Affiant asserts there is probable cause to believe that on or about June 25, 2003, within the Southern District of California, the defendant, Wolfgang Martin GRABHER, did knowingly and willfully make a false claim or statement in an application for a United States Visa with intent to induce or secure the issuance of a United States Visa as evidence of authorized stay or employment in the United States, and used that U.S. Visa as evidence of authorized stay or employment in the United States to enter the United States, knowing it to have been procured by means of any false claim or statement, to wit: GRABHER completed a U.S. Nonimmigrant Visa Application (form DS-156) in which he failed to disclose his previous criminal arrest record, all in violation of Title 18, United States Code, Section 1546a.

Based on the aforementioned information, Affiant asserts there is probable cause to believe that on or about March 01, 2007, within the Southern District of California, the defendant, Wolfgang Martin GRABHER, did knowingly and willfully make a false claim or statement in an application for a waiver of a United States Visa with intent to induce or secure the issuance of a waiver of a United States Visa requirements as evidence of authorized stay in the United States, to wit: GRABHER completed a U.S. Nonimmigrant Visa Waiver Arrival / Departure Form application (form I-94W) in which he failed to disclose his previous criminal arrest record, all in violation of Title 18, United States Code, Section 1546a.

R. Christopher Good
Special Agent
U.S. Department of State
Diplomatic Security Service

SWORN AND SUBSCRIBED TO before me
this 5th day of December, 2007.

RUBEN B. BROOKS
United States Magistrate Judge